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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,885	08/21/2003	Paul Roland Bergquist	J6819(C)	8190

201 7590 12/14/2005

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EXAMINER

TORRES VELAZQUEZ, NORCA LIZ

ART UNIT PAPER NUMBER

1771

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/645,885

Applicant(s)

BERGQUIST ET AL.

Examiner

Norca L. Torres-Velazquez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 6-18 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 7-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 10, 2005 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1 and 7 have been considered but are moot in view of the new ground(s) of rejection.

a. Applicants have amended independent claims 1 and 7 to require that the fibers forming the areas of higher basis weight consist of synthetic fibers. Applicants find support for such limitation in paragraph [0017] at page 7 of the Specification.

It is noted herein that the alleged support for the term "synthetic fibers" is not proper since Applicants are trying to claim a broader term than what is supported by the Specification. The term "synthetic fibers" is a broad term that encompasses many different materials that are not supported by the Specification. The Specification provides support for polypropylene fibers, but not support for the numerous materials encompassed by the term synthetic. Therefore, the term "synthetic fibers" is considered herein to be new matter.

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b. The Examiner relies herein on BOUCHETTE (US 6,110,848) as secondary reference to provide synthetic fibers to the higher basis weight areas of the SUSKIND et al. nonwoven fabric.

c. Applicants argue that neither Suskind nor Wagner et al. disclose the Air Permeability of 300 to 1000. As noted in the previous office action, the Air Permeability can be manipulated by one having ordinary skill in the art of hydroentangled fabrics as it is evidenced by the same reference when one compares the hydroentangling conditions between example 4 and 5 of Suskind. Example 4 uses a support woven transfer belt with lower air permeability to the one used in Example 5. The fabric produced in Example 4 has a nonapertured appearance as a result of the tightly woven transfer belt material versus the apertured fabric of Example 5, which uses a higher permeability transfer belt.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the permeability of the fabric and provide with a higher permeability with the motivation of producing a material with a higher degree of absorption capacity as shown by SUSKIND. (Refer to properties of materials in examples) It is well settled that determination of optimum values of cause effective variables such as Air Permeability is within the skill of one practicing the art. In re Boesch, 205 USPQ 215 (CCPA 1980).

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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4. Claims 1, 3-4, 7-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. As explained above, the Specification provides support for polypropylene fibers and not for "synthetic fibers". (Refer to page 7, paragraph [0017] of the Specification).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 1, 3-4, 14 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. (US 4,808,467) which is an equivalent to EP 0308320 A in view of BOUCHETTE (US 6,110,848).

SUSKIND et al. discloses a fabric produced by hydroentangling a web with a basis weight of 0.3 ounce per square yard of continuous nylon filaments between two 0.9 oz/sq. yd. wet laid webs of pulp and polyethylene terephthalate. (Refer to Example 4, Column 7, lines 14-35). It is further noted that the SUSKIND et al. reference further teaches that the basis weight of the base web (central area) is in the range of 0.15 to 0.8 ounce per square yard. (Refer to Col. 3, lines 3-6) Those range with the values disclosed in the examples for the wet laid webs meet the presently claimed ratio ranges from 4:1 to 2:1. It is noted that the reference teaches using the material as absorbent materials. (Col. 1, lines 48-68).

While Example 4 of the SUSKIND et al. reference shows a Frazier Air Permeability of 148 CFM/sq.ft (Table III), it is noted that Air Permeability can be manipulated by one having ordinary skill in the art of hydroentangled fabrics as it is evidenced by the same reference when one compares the hydroentangling conditions between example 4 and 5. Example 4 uses a support woven transfer belt with lower air permeability to the one used in Example 5. The fabric produced in Example 4 has a nonapertured appearance as a result of the tightly woven transfer belt material versus the apertured fabric of Example 5, which uses a higher permeability transfer belt.

Therefore, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the permeability of the fabric and provide with a higher permeability with the motivation of producing a material with a higher degree of absorption capacity as shown by SUSKIND. (Refer to properties of materials in examples)

SUSKIND fails to teach the use of fibers consisting of "synthetic fibers" in the areas of higher basis weight.

BOUCHETTE discloses a three-ply sandwich structured hydroentangled web in which the top and bottom plies comprise synthetic fibers and the middle ply comprises cellulosic fibers. The middle layer cellulosic fiber can optimally be wholly or partially replaced with synthetic fibers. The hydroentangled webs of the reference are useful in the manufacture of towels, wet wipes, industrial wipes and medical gowns. (Abstract) Among the suitable synthetic fibers disclosed by the reference are polypropylenes. (Col. 4, lines 17-18)

Since both references are directed to hydroentangled fabrics useful in the field of disposable medical applications, the purpose disclosed by BOUCHETTE would have been recognized in the pertinent art of SUSKIND.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the areas of higher basis weight of SUSKIND which form the outside surfaces of the material and substitute the wood pulp material with synthetic fibers with the motivation of maximize the desirable hand feel associated with synthetics compared to wood pulp as disclosed by BOUCHETTE. (Col. 2, lines 59-62).

7. Claims 7-9, 12, 16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and BOUCHETTE as applied above, and further in view of WAGNER et al. (US 5,951,991).

While SUSKIND et al. discloses the structure of the nonwoven hydroentangled textile, it fails to teach the use of a cleansing composition comprising a lathering surfactant as claimed herein.

WAGNER et al. relates to a substantially dry, disposable, personal cleansing product. The reference teaches the use of apertured hydroentangled substrates. (Refer to Col. 7, lines 33-col. 8, lines 17) The reference teaches the use of from about 0.5% to about 40% lathering surfactant based on the weight of the substrate. (Col. 8, lines 45-49) The reference further teaches the use of a conditioning emulsion comprising from about 0.25% to about 1505 of the substrate. (Col. 14, lines 2-24)

Since the references are directed to high strength hydroentangled materials, the purpose disclosed by WAGNER et al. would have been recognized in the pertinent art of SUSKIND et al.

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It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the substrate of SUSKIND et al. and provide with a cleansing composition with lathering surfactant with the motivation of producing a personal cleansing product as disclosed by WAGNER. (Col. 1, lines 15-39)

8. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al., BOUCHETTE and WAGNER as applied to claim 7 above, and further in view of BERGQUIST (US 6,723,330 B2).

While WAGNER teaches a substantially dry, disposable, personal cleansing product, it fails to teach the use of effervescent ingredients that would produce foam upon contact with water.

BERGQUIST teaches an article for cleansing body surfaces that includes an effervescent cleansing composition capable of generating foam upon contact with water. (Abstract) The reference teaches the use of sodium bicarbonate and citric acid. (Col. 2, lines 37-39)

Since this reference is also directed to a substantially dry cleansing composition, the purpose disclosed by BERGQUIST would have been recognized in the pertinent art of WAGNER.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the cleansing composition and provide it with the effervescent composition with the motivation of generating a foam upon contact with water without the need to mechanically treat the material to produce the foam.



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9. Claims 13 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over SUSKIND et al. and WAGNER et al. as applied to claims 1 and 7 above, and further in view of BROOKS (US 2003/0207632 A1).

BROOKS is directed to disposable washcloth and teaches a base sheet that could be made from any suitable synthetic or natural material or blend thereof that is durable, non-abrasive, fluid retentive and disposable. The reference teaches the use of nonwoven hydroentangled materials and teaches that suitable polymers include polyolefin such as polyethylene and polypropylene, rayon, polyesters, nylon, among others. (Refer to [0015])

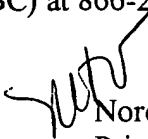
SUSKIND et al. discloses the claimed invention except that it uses nylon instead of polypropylene, BROOKS shows that polypropylene is an equivalent structure known in the art. Therefore, because these two references were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute nylon for polypropylene.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-5:00 pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Norca L. Torres-Velazquez  
Primary Examiner  
Art Unit 1771

December 8, 2005